



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

DEON D. JENKINS,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS *et al.*,

Defendants.

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CIVIL ACTION NO. 0:05-888-HFF-BM

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE, GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, AND DISMISSING THE ACTION

This case was filed as a Section 1983 action. Plaintiff, a state prisoner, is proceeding *pro se*. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Court grant Defendants' Motion for Summary Judgment and dismiss the action. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on May 16, 2006. Although Plaintiff failed to file any objections to the Report, Defendants submitted an objection on June 5, 2006. In their objection, they object to the Magistrate Judge's failure to recommend that the Court issue a Section 1915(g) strike against Plaintiff. The Fourth Circuit has previously held, however, that such a strike is inappropriate when, as here, a plaintiff's claim is dismissed upon a grant of summary judgment. *See, e.g., Pressley v. Rutledge*, 82 Fed. Appx. 857 (4th Cir. 2003). Accordingly, the Court will overrule this objection.

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Defendants' objection, adopts the Report, and incorporates it herein. Therefore, it is the judgment of this Court that Defendants' Motion for Summary Judgment must be **GRANTED**. This action is, therefore, **DISMISSED**.

IT IS SO ORDERED.

Signed this 8th day of June, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.